IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/10/2003

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION NO.10727 OF 2003
AND WRIT PETITION NOS., 10728, 10730
11919 to 11921, 11565 to 11567,11899,
11900, 11902, 11935 to 11937, 12367 to 12369,
12370 to 12372, 12007, 12008, 12010, 12349, 12351,
12353, 12519, 12520, and 12522 OF 2003

AND

W.P.M.P.NOS.13553, 13554, 13556, 14943 to 14945,
14542 to 14544, 14926, 14927, 14929, 14962 to 14967,
15537 to 15542, 15543 to 15548, 15058, 15059,
15061, 15513, 15514, 15516, 15517, 15690 to 15693,
15696 and 15697 OF 2003

W.P.NO.10727 OF 2003:

Bhaarathiya Electricity Employees Federation
(Regn.No.990/SLM)
affiliated to Bharatiya Mazdoor Sangh (BMS),
represented by General Secretary,
R.Murali Krishnan ..... Petitioner

-Vs-

1. The Management,
Tamil Nadu Electricity Board,
represented by its Secretary,
N.P.K.R.R.Maaligai,
Electricity Avenue,
Anna Salai, Chennai-2.

2. The Government of Tail Nadu,
represented by its Development Commisisioner &
Secretary,
Finance (Pensions) Department,
Fort St.George,
Chennai-9. ..... Respondents

For Petitioner : Mr.K.Chandru, SC
for Mr.R.Yashod Vardhan
Mr.S.Doraisamy
Ms.R.Vaigai
Mr.R.Viduthalai
Mr.N.G.R.Prasad, SC
M/s.Row & Reddy
Mr.R.Thiagarajan, SC

For Respondents : Mr.R.Muthukumaraswamy
Addl.Advocate General
assisted by Mr.S.T.S.Murthy,SplGP

:COMMON ORDER

F.M.IBRAHIM KALIFULLA, J.

The Challenge in these Writ Petitions is to the Proceedings of the Tamil Nadu Electricity Board in (Per) B.P.(Ch.) Nos.64, 65 and 66 ( SB) dated 31-3-2003.

2. In (Per) B.P.Ch.No.64, the Tamil Nadu Electricity Board, by virtue of the provisions of the Tamil Nadu Pension Rules 1978, which according to it, was applicable to the employees of the Tamil Nadu Electricity Board, it became necessary to adopt the orders relating to Government Pensioners to the Pensioners of the Tamil Nadu Electricity Board, that by G.O.No.71 dated 19-3-2003 of the State Government, the qualifying service to earn full pension having been enhanced from 30 years to 33 years, the same enhancement is also made applicable to the employees of the Board after retirement to become eligible to earn full pension. For the same reasoning, the Board also directed that pension would be determined on the average emoluments drawn during the last 10 months service alone. Following the direction in G.O.No.71 dated 19-3-2003, the above said Board proceedings were also made applicable from 1-4-2003.

3. Similarly, in (Per) B.P.Ch.No.65, dated 31-3-2003 the Tamil Nadu Electricity Board enhanced the discount rate of commutation from 4% to 8% inconsonance with the G.O. No.73 dated 19-3-2003. Likewise in (Per) B.P.No.66 dated 31-3-2003, the maximum limit for commutation of the portion of the pension by the pensioner was also restricted to 33.1/3% by following G.O.No.74 dated 19-3-2003.

4. In fact, in (Per)B.P.Ch.No.67, dated 31-3-2003, the Tamil Nadu Electricity Board, by following G.O.No.75 dated 19-3-2003, directed that payment of Gratuity at the time of retirement would be made 50% by way of cash and 50% by way of Small Savings Certificate or National Savings Certificate (Plan VIII-Issues) issued on or after 1-4-2003. However, it is stated that as the said G.O.75 itself came to be subsequently withdrawn in G.O.No.218 dated 26-7-2003, the said (Per) B. P.Ch.No.67 dated 31-3-2003 was not brought into effect.

5. At the outset, it will have to be stated that since all the impugned Proceedings came to be issued based on the corresponding Government Orders, testing the validity of the impugned proceedings depend upon the corresponding G.Os., based on which the Proceedings came to be

issued. It is also relevant to mention that the said Government Orders themselves were under Challenge in a batch of Writ Petitions in W.P.Nos.11228 of 2003 etc., in which, we have rendered our Judgment dated 23-4-2003 wherein, while upholding G.O.No.71 and 74 dated 19-3-2 003, we have set aside G.O.No.73 dated 19-3-2003.

6. On behalf of the petitioners, submissions were made by Mr.R. Thiagarajan, Senior counsel, Mr.K.Chandru,Senior counsel, Mr.N.G.R. Prasad, Miss.R.Vaigai and R.Viduthalai. The respondent Board was represented by the learned Addl.Advocate General.

7. Mr.N.G.R.Prasad, learned counsel in his submissions, contended that the Electricity Board being a statutory body, it has got its own independent existence, therefore, what applies to the government employees does not automatically apply to the employees of the Board and therefore, merely by adopting the Government Orders, the Board cannot contend that it need not follow the provisions contained under the Industrial Disputes Act in particular Section 9(A) of the Act. According to the learned counsel, Regulation 9 of the Tamil Nadu Electricity Board Liberalised Pension Regulations 1960 hereinafter called 'the Pension Regulations', which, is the saving provision, which provides that those regulations are not in derogation of the provisions of the civil service regulations applicable to the Government employees will not take away the effect of Section 9(A) of the Industrial Disputes Act. According to the learned counsel, the Pension Regulations themselves will not apply to the Electricity Board employees who were governed by the existing contract prevailing between the Board and its employees. The learned Senior counsel would further contend that when Section 9(A) of the Industrial Disputes Act is applicable to the employees of the Board, without giving an appropriate notice under the said provision, the impugned Proceedings can not be given effect to. It was next contended that in any event, the Chairman was not competent to issue the Proceedings on behalf of the Board. Further, according to the learned counsel as the issues relate to service matters, it cannot be held that the Board is bound to follow the directives of the State Government in exercise of the powers under Section 78(A) of the Electricity (Supply) Act 1948 which only talks of policy matters. One other contention of the learned counsel was that by virtue of Regulation 17(g) as well as, Explanation V (gg)(i) to Regulation 17 of the Tamil Nadu Electricity Board Service Regulations, hereinafter called 'the Service Regulations', when provisions have been made as to how retirement is to take effect and an employee would qualify for pension after completion of 20 years of service, even the Pension Regulations will have no effect inasmuch as, the Service Regulations have been framed by virtue of the powers vested with the Board under 79( c) of the Electricity Supply Act 1948. The learned Senior counsel relied upon an unreported judgment of the learned Single Judge rendered in W.P.No.11398 dated 22-12-1994 which was also confirmed in W.A.No.1 53 of 1995, dated 21-7-1997, as well as, the Division Bench Judgment in W.A.No.138 of 1960 dated 15-12-1960. Reliance was also placed upon 1968 Kerala 76 (A.M.MANI versus KERALA STATE ELECTRICITY BOARD REP. BY ITS SECRETARY, TRIVANDRUM & OTHERS).

8. Mr.K.Chandru, learned Senior Counsel appearing for the petitioners in W.P.No.11919 to 11921, fairly stated that by virtue of the settlement between the Board and its employees and the clauses in the settlement specifically provide that the revised pension scheme of the Tamil

Nadu Government and any amendments thereon from time to time would apply to the pensioners of the Tamil Nadu Electricity Board, there is no scope to still contend that Section 9(A) should be complied with by the Board before introducing any change in relation to pensionary benefits. According to the learned Senior counsel, by virtue of Proviso (A) of Section 9 of the Industrial Disputes Act, the Tamil Nadu Electricity Board need not issue any notice before introducing any change in the pensionary benefits when the changes are brought out by the State Government. The learned senior counsel, however, contended that the Proceedings are liable to be set aside on the ground that there was non application of mind and inasmuch as the Board's audited Budget provisions make it clear that funds have been duly allocated for Gratuity and Pension based on the pensionary provisions and in the circumstances, the mechanical adoption of the Government Orders without reference to the Board's financial position would render the impugned Proceedings invalid.

9. Ms.R.Vaigai, learned counsel appearing for the petitioners in W.P.Nos.11899 to 11902, in her submissions, relied upon the judgments reported in 1983(1) SCC 305 (D.S.NAKARA AND OTHERS versus UNION OF INDIA), 1997 (6) SCC 7 (K.L.RATHEE versus UNION OF INDIA), 1996(2) LLJ 1 127 (SECRETARY, (ESTT.) RAILWAY BOARD versus D.FRANCIS PAUL, ETC.), 1 984(3) SCC 281 (EX.CAPT.K,C.ARORA & ANOTHER STATE OF HARYANA & OTHERS), 1978(2) SCC 50 (MADAN MOHAN PATHAK versus UNION OF INDIA), 1989(3 ) SCC 132 (MARATHWADA UNIVERSITY versus SESHRAO BALWANT RAO CHAVAN) and 1955 SC 188 (GANAPATHI SINGHJI versus STATE OF AJMER) and contended that in the light of the broad principles set out in the Judgment of the Hon'ble Supreme Court in the case of 'D.S.Nakara',reported in 1 983(1) SCC 305 (cited supra), pensioners will have to be treated as a class and it will have to be held that they have acquired their rights by virtue of long service rendered with the Board and that by the impugned Proceedings as between a Class of Pensioners, two different yard sticks cannot be applied. According to the learned counsel, though it may be open for the Board to seek for introduction of such new conditions and applying them to those who enter into service after 1 -4-2003, the same cannot be imposed on the existing employees who entered into service prior to that date. The learned counsel further contended that when the Board itself was not empowered to delegate its powers to the Chairman, the Chairman had no jurisdiction to issue the impugned Proceedings by merely relying upon the so called delegation of powers in B.P.Ch.Nos.1084 dated 28-6-1979. It was further contended that by virtue of Section 6(A) and 17(A)(A) of the Employes Provident Funds and Miscellaneous Provisions Act, read with Section 13(B) in respect of the exempted schemes, without obtaining the approval of the Central Government, no change can be effected.

10. Mr.R.Viduthalai, learned counsel appearing for the petitioners in W.P.Nos.11935 to 11937 of 2003, etc., contended that apart from total non application of mind, while adopting the Government Orders, there was no scope for the Board to merely rely upon the Government Order while making a change in the pension provision without necessary amendment to Rule 9 of the Pension Regulations. According to the learned counsel, the financial unsustainability which weighed with the State Government will not apply in view of the Board's financial position. In such circumstances, there being violation of Article 14 of the Constitution, the impugned Proceedings are liable to be set aside.

11. Mr.R.Thiagarajan, learned Senior counsel appearing for the petitioners in W.P.No.12519 to 12520 of 2003, etc., by relying upon AIR 1986 SC 515 (INDIAN EXPRESS NEWSPAPERS (BOMBAY) PRIVATE LTD. AND OTHERS ETC., ETC. versus UNION OF INDIA & OTHERS) and by referring to additional affidavit filed on behalf of the petitioners, pointed out that as many as 369 members of that petitioner association alone completed 30 years of service on 31-3-2003, and therefore, the impugned proceedings must be held to be suffering from the test laid down in the above said Judgment in order to be interfered with in that Writ Petition.

12. As against the above submissions made on behalf of the petitioners, the learned Additional Advocate General contended that by (Per) B.P.Ms.(FB)No.5 dated 26-6-1986 of the employees of the Tamil Nadu Electricity Board have now been brought under the Pension Scheme governed by the Tamil Nadu Electricity Board Employees Pension Rules, that by Permanent B.P.(FB) No.7 dated 17-2-1995, the Saving Clause in Clause 9 of the Pension Regulations have also been suitably amended providing that instead of Civil Services Regulations, the Tamil Nadu Pension Rules 1978 would be applicable, therefore, the Tamil Nadu Electricity Board Liberalised Pension Regulations 1960 is in addition to the Tamil Nadu Pension Rules, 1978 and therefore, by virtue of the existing regulations in regard to Pension Provisions applicable to the employees of the Board, when the Tamil Nadu Pension Rules are straight away applicable irrespective of the impugned B.Ps., the employees of the Board are bound by whatever change or amendment brought to the Tamil Nadu Pension Rules and therefore, the implementation of G.O.No.71 , 73 and 74 dated 19-3-2003 to the employees of the Electricity Board governed by the Tamil Nadu Electricity Liberalised Pension Regulations cannot be called in question. As regards the contention based on Section 9(A) of the Industrial Disputes Act, the learned Addl. Advocate General contended that by virtue of the Clause in the settlement dated 8-7-1998 to which all the existing unions including the petitioner unions are signatory to the said settlement, there is no scope to invoke Section 9(A) of the Industrial Disputes Act. He also contended that in any event since the changes which were sought to be introduced under the impugned Proceedings do not fall under any of the items in the Schedule IV of the Industrial Disputes Act, Section 9(A) will have no application.

13. As regards the contention based on lack of necessary delegation available to the Chairman of the Board to issue the impugned Proceedings, according to the learned Addl.Advocate General, the impugned Proceedings were only communicated for implementation of the relevant G.Os. in G.O.No.71, 73 and 74 which have brought out the consequential changes in the Pension Regulations and therefore, communication of the same by the Chairman cannot be faulted. According to the learned Addl.Advocate General, even in the year 1996 when maximum eligibility of 33 years for earning full pension was brought down to 30 years, on that occasion also, it was only communicated by the Chairman. By referring to para 7 of the counter affidavit, the learned Addl. Advocate General contended that the loss incurred by the Board during 2001-2 002 and 2002-2003 being of the order of Rs.2201.78 and 1554.74 Crores respectively, it cannot be held that there was non application of mind and that it was arbitrary or unreasonable to implement the above said G.Os. The learned Addl.Advocate General relied upon 1993(4) SCC 62 (STATE OF WEST BENGAL AND OTHERS versus RATAN BEHARI DEY AND OTHERS) in support of his contention that the specification of cut of date, viz.,

1-4-2003 was reasonably fixed by the State Government and therefore, on that ground it cannot be held that the same cannot be made applicable to the existing employees who are to retire after 1-4-200 3. The learned Addl.Advocate General further contended that by applying the dictum of the Hon'ble Supreme Court in 'Nagaraj's case' reported in AIR 1985 SCC 551, it will have to be held that the changes brought out were all reasonable and cannot be held to be arbitrary exercise of power or irrational in order to be interfered with.

14. Having heard the learned counsel appearing for the respective parties in this batch of Writ Petitions, which relate to the employees of the Tamil Nadu Electricity Board, the question for consideration is whether the import of the changes brought out by the State Government by G.O.Nos.71, 73 and 74 can be made applicable by virtue of Regulation 9 of the Tamil Nadu Electricity Board Liberalised Pension Regulations, without anything more. If our answer to that question is in the affirmative, then all the other contentions of the petitioners would automatically fall to the ground.

15. However, before adverting to the above said question, we want to steer clear of the very validity of the concerned G.Os. with reference to which we have made a detailed discussion in our order dated 2 3-10-2003 in the batch of the Writ Petitions in W.P.Nos.11228 of 2003 , etc., wherein, the said G.Os. came to be challenged. In the said order, we have reached a conclusion that G.O.Nos. 71 and 74 dated 19-3 -2003 are valid and accordingly, we have upheld the said G.Os. As far as G.O.No.73 dated 19-3-2003, we have held that the said G.O. was arbitrary and irrational and therefore, the same was liable to be set aside. Inasmuch as, we have set aside G.O.No.73 dated 19-3-2003, the corresponding (Per)B.P.Ch.No.65 dated 31-3-2003 cannot also stand. Therefore, irrespective of the question as to the validity of the impugned B.P.Ch.No.65 dated 31-3-2003, as the very G.O.No.73 dated 19-3-2003 which was sought to be implemented under the present B.P.No.65 itself has been set aside, we are of the considered view that there is no point in unnecessarily deliberating on the details of the above said impugned (Per)B.P.No.65, and we hold that the said (Per)B.P.Ch. No.65, dated 31-3-2003 can not stand the scrutiny of this Court for the simple reason that the very basis of the issuance of the said B.P., viz., G.O.No.73 dated 19-3-2003 itself having been set aside by this Court in W.P.Nos.11228, 18906, 18907 and 11666 of 2003.

16. As far as the other Board Proceedings are concerned, the main Challenge to the above said Board Proceedings are, in the first place, the said Board Proceedings came to be issued in violation of Section 9(A) of the Industrial Disputes Act. To buttress the said argument, reliance was placed upon the settlement dated 8-7-1998. It is not in dispute that the employees of the Board are governed by the provisions of the Industrial Disputes Act and the various Unions representing the employees are signatory to the said settlement. Clause 15(iii) of the said settlement is in the following terms.

" The revised pension schemes of the Government of Tamil Nadu and any amendments thereon from time to time will be applied to the pensioners of the Tamil Nadu Electricity Board"

17. Proviso (a) to Section 9(A) of the Industrial Disputes Act, makes it clear that where the change in the conditions of the service applicable to

any workman in respect of any matter specified in the IV Schedule is effected in pursuance of any settlement or award, no notice under Section 9(A) is required. Though the learned Addl.Advocate General would attempt to contend that the changes brought out to the pensionary benefits are not one of the items covered by Schedule IV of the Industrial Disputes Act, we are afraid that the said stand may not be acceptable in view of the fact that very Item No.2 in the IV Schedule talks of pensionary benefits. However, it cannot be disputed that Clause 15(iii) of the Settlement dated 8-7-1998 specifically provides that the revised Pension Scheme of the Government employees and any amendments thereof from time to time can be straight away applied to the pensioners of the Tamil Nadu Electricity Board. In view of our conclusion based on Clause (a) to the proviso to Section 9(A) of the Act, we do not find any scope to consider the submissions made on Sub Clause (b) of the said proviso.

18. Having regard to B.P.Ms.(FB) No.5 dated 26-6-1986, all the employees of the Electricity Board have been brought under the Pension Scheme covered by the provisions of the Tamil Nadu Electricity Board Liberalised Pension Regulations 1960. In such circumstances, when by G.O.Nos.71 and 74 dated 19-3-2003 certain amendments were introduced to the pension provisions of the employees of the State Government, by virtue of Clause 15(iii) of the settlement dated 8-7-1998, the enforcement of the same in respect of the employees of the Tamil Nadu Electricity Board becomes automatic. In fact, it will have to be held that mere communication to that effect would be sufficient to implement any such amendments brought out by the State Government in respect of pension benefits brought by it to its employees in order to be made applicable to the employees of the Tamil Nadu Electricity Board. Further more, we are convinced that Tamil Nadu Electricity Board Liberalised Pension Regulations having brought into effect and Regulation 9 when specifically provides that the other Regulations are in addition to the Tamil Nadu Pension Rules and not in derogation thereof, it is axiomatic that so long as the present changes brought out in G.O. No.71 and 73 dated 19-3-2003 are not in derogation of the Tamil Nadu Electricity Board Pension Regulations, such amendments brought out in the Tamil Nadu Pension Rules would automatically become part of the said Regulations. In the light of the subsequent B.P.(FB) No.7 dated 1 7-2-1995, there is no scope to contend that what was contemplated in the erstwhile regulation No.9 of the Tamil Nadu Electricity Board Liberalised Pension Regulations was only Civil Service Regulations and not Tamil Nadu Pension Rules 1978.

19. As regards the submission based on Tamil Nadu Electricity Board Service Regulations 17(g) and 17(v)(gg)(i), it will have to be stated that the same do not provide for payment of pension or any other benefits to the employees of the Board. Those service regulations by themselves do not prescribe the various stipulations relating to the payment of pension or the other allied matters. On the other hand, it cannot be disputed that payment of pension in respect of the employees of the Board is governed by the Pension Regulations. In fact, it is nobody's case that payment of pension in the Electricity Board and the pension regulations are covered by the provisions of the Tamil Nadu Electricity Board Service Regulations. In such circumstances, the argument based on the said Regulation 17(g) and 17(v)(gg)(i) of the Tamil Nadu Electricity Board Service Regulations to thwart the provisions of the Tamil Nadu Electricity Board Liberalised Pension Regulations cannot also be

accepted. Therefore, by virtue of Regulation 9 of the Pension Regulations and Clause 15(iii) of the settlement dated 8-7-1998, the import of the amendments brought out in G.O.No.71, 73 and 74
became part of the regulations governing the payment of pension in respect of employees of the respondent Board. As rightly contended by the learned Addl.Advocate General, by the impugned B.Ps., the second respondent, namely, the Chairman of the Tamil Nadu Electricity Board is not attempting to introduce any change in the service Regulations or in the Pension Regulations, but only communicating the effect of the changes brought out to the Pension Regulations of the Electricity Board employees by virtue of the amendments brought out to the Tamil Nadu Pension Rules pursuant to G.O.Nos.71, 73 and 74 dated 19-3-2003. Therefore, the other argument based on the validity of delegation or the competence of the second respondent in issuing the impugned B. Ps. do not merit any consideration.
20. Since we have dealt with the correctness of the G.O.Nos.71, 73 and 74 dated 19-3-2003 in the other batch of Writ Petitions covered by our order dated 23-10-2003 in W.P.No.11228 of 2003, etc., we adopt the said reasoning while upholding the above said G.O.Nos.71 and 74 dated 19-3-2003 and for setting aside the G.O.No.73 dated 19-3-2003. We therefore, do not propose to go into the details of the other submissions which touch upon the correctness of the validity of those G. Os.

21. As a sequel to our above said conclusion, we uphold (Per) B.P. Ch.Nos.64 and 66 dated 31-3-2003 and set aside (Per) B.P.Ch.No.65 dated 31-3-2003. Accordingly, the Writ Petitions in W.P.Nos.10730, 11566, 11920, 11902, 12010, 12352, 12368, 12367, 12369, and 12520 of 2003 are allowed; and 10727, 10728, 11565, 11567, 11899, 11900, 11919, 1192 1, 11935, 11936, 11937, 12007, 12008, 12349, 12351, 12370, 12371, 123 72, 12519, 12522 of 2003 are dismissed.
In the circumstances of the case, we make no order as to costs.
Consequently, all the connected W.P.M.Ps. are closed.

Index: Yes
Internet: Yes

To

1. The Management,
Tamil Nadu Electricity Board,
represented by its Secretary,
N.P.K.R.R.Maaligai,
Electricity Avenue,
Anna Salai, Chennai-2.

1. The Development Commisisioner &
Secretary,
The Government of Tail Nadu,
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